HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1513 OF 2017
&
WRIT PETITION No.36981 OF 2018

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.R.Sushanth Reddy, learned counsel for appellant, learned Government Pleader (Excise) for respondents 1 to 4 and Mr.P.Lakshma Reddy, learned counsel for respondent No.5.

2. The parties are referred as arrayed in the appeal.

3. The subject matter of these two cases relates to grant of IMFL/FL licence in favour of Jadhav Upender, s/o Chatru Naik, pursuant to notification No.9-A dated 13.09.2017. The challenge is confined to shop at Sl.No.22 (Utnoor Shop No.1), Utnoor, Adilabad District (for short, 'the subject shop') in the said notification.

4. The appellant prayed for Mandamus declaring the inaction of respondent Nos.2 and 4 in including the token of the petitioner for drawal of lots for subject shop as illegal and contrary to the Telangana Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012. The licence is for the period 01.10.2017 to 30.09.2019.

5. According to the schedule given in the notification dated 13.09.2017, the last dates for filing application and the drawal of lots are 19.09.2017 and 22.09.2017. The appellant claims to be a person belonging to scheduled tribe and satisfies the requirement of "local scheduled tribe candidate". According to him, he enclosed local scheduled tribe certificate along with his application and on being satisfied that the appellant satisfies the eligibility criteria, the

appellant was issued entry pass for participation in the drawals held on 22.09.2017. On 22.09.2017, the token of appellant was not included in the drawal held for subject shop, the lots were drawn and the 5th respondent since has been the successful bidder. On verification, it is averred it has come to knowledge of appellant that the respondents have not included the token of appellant in the draw held on 22.09.2017, by referring to appellant's failure to produce the native certificate. The appellant lays challenge to the allotment as well as the procedure followed by the respondents between 19.09.2017 and 22.09.2017. The learned Single Judge dismissed the writ prayer on the ground that the appellant has effective remedy of appeal under the Telangana State Excise Act, 1968 and the Rules made thereunder and the circumstances of the case do not warrant consideration under Article 226 of Constitution of India. Hence, the appeal.

6. Mr.R.Sushanth Reddy contends that firstly the undisputed circumstances and the non-inclusion of appellant's case in drawal of lots do not come within the scope of remedy of appeal and secondly the circumstances on hand are glaring that there is no justifiable reason for not including an eligible application which was accepted and entry pass was given to the appellant. According to him, the appellant at the time of drawal of lots has produced the xerox copy of local area scheduled tribe certificate. According to him, there is no requirement going by the rules for producing the original of certificate by an applicant. When the appellant sought time for producing the certificate, firstly time was not granted and secondly lots were drawn without including token No.4 granted to

the appellant. Therefore, for all the above reasons, the allotment in favour of 5th respondent is liable to be set aside as illegal and contrary to rules.

7. We have given time to the learned counsel for Excise Department to verify the record and assist whether the appellant has produced the local area scheduled tribe certificate and whether for including the eligible application in the last, whether one is required to produce local area certificate once again. We have called upon the learned Government Pleader to State before the Court whether the appellant, along with his application, produced certificates, copy of local area certificate or not. The learned Government Pleader referring to the record states that the said certificate is produced at the first instance which resulted in issuing token number and entry pass to appellant. On the second clarification we sought viz., whether once again the applicant is required to produce the local area certificate, it is stated that since requirement is not found in the Rules.

8. We have perused the Rules and have taken note of the statement made for and on behalf of the respondents. We are of the view that the case of appellant has been arbitrarily rejected from inclusion in the lots drawn on 22.09.2017 for non-production of original local scheduled tribe certificate. Therefore, the decision of respondents is arbitrary, contrary to the Rules and unconstitutional. Hence, the grant of licence in favour of 5th respondent for subject shop is liable to be set aside and is accordingly set aside.

9. After the order is dictated, the Mr.P.Lakshma Reddy, appearing for respondent No.5, submits that his client has paid the

amount for two years, and the licence if is cancelled at this length of time, the 5th respondent would suffer great hardship financially. We have taken note of the submission and are of the view that the 5th respondent has already operated the licence till date. The licence fee if is paid for two years, the 5th respondent is entitled for reimbursement proportionate to the unfinished or remaining period from Department. The 5th respondent is given liberty to represent to respondent Nos.1 to 4 and they are under obligation to pass appropriate orders within two weeks from the date of receipt of such representation. In view of cancellation of allotment of subject shop made in favour of the 5th respondent, respondent Nos.1 to 4 are given liberty to conduct fresh bid for the subject shop.

10. The 5th respondent in W.A.No.1513 of 2017 is the petitioner in W.P.No.36981 of 2018. He challenges the proceedings Rc.No.A7/ P&Ex./2017-19 dated 06.09.2018 of the District Prohibition and Excise Officer, Adilabad District stopping Chatru Naik Wines situated at D.No.3-76, Utnoor Mandal, Adilibad District as illegal, arbitrary and violative of principles of natural justice besides being contrary to the order dated 27.08.2018 passed in W.A.M.P.No.2804 of 2017 in W.A.No.1513 of 2017 and consequently set aside the proceedings Rc.No.A7/ P&Ex./2017-19 dated 06.09.2018 of the District Prohibition and Excise Officer, Adilabad.

11. Having regard to the order in W.A.No.1513 of 2017, the cause in the instant writ petition does not survive.

12. For the above reasons, the writ appeal is ordered as indicated above and the writ petition is dismissed as infructuous. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

14th November, 2018

Note: Issue CC in one week
B/o
*Lrkm*